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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In Re

JOHN FREDERICK DIXON,

Debtor.

Case No. 09-11851 AJ
Chapter 11

**FIRST INTERIM APPLICATION FOR
COMPENSATION AND
REIMBURSEMENT OF EXPENSES BY
COUNSEL FOR DEBTOR**

Date: December 4, 2009
Time: 10:30 a.m.
Place: 99 South "E" Street
Santa Rosa, California

TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY
JUDGE:

Wendel, Rosen, Black & Dean LLP ("Applicant"), a partnership of attorneys, applies to this Court for approval of its First Interim Application for Compensation and Reimbursement of Expenses ("Application"), seeking approval and allowance of \$55,478.00 in fees and \$3,246.03 in costs, for a total of \$58,724.03, for the period of June 19, 2009, through October 31, 2009 ("Application Period").

As of the commencement of the case, Applicant had a prepetition retainer of \$81,769.11 ("Retainer"). Applicant had represented the Debtor in other nonbankruptcy matters prior to the

1 commencement of the case, and upon the completion of those matters, Applicant had in its
2 possession a retainer balance of \$20,926.50. Applicant rolled over the retainer balance from the
3 nonbankruptcy prepetition matters into the Retainer, making the Retainer balance \$102,695.61.
4 Applicant seeks the allowance and authorization for payment of \$55,478.00 in fees and \$3,246.03
5 in costs, for a total of \$58,724.03, and authorization to apply the Retainer to those fees and costs.

6 **I. INTRODUCTION**

7 The Debtor commenced the within case by the filing of a voluntary petition under
8 Chapter 11, on June 19, 2009, and an order for relief was entered on that date. Since that time,
9 Debtor has been a debtor in possession of his assets, no trustee having been appointed. Pursuant
10 to an order entered by this Court on July 23, 2009, Debtor was authorized to retain Applicant as
11 counsel for the debtor in possession, effective as of June 19, 2009.

12 **II. BACKGROUND**

13 The Debtor is the President, a director and shareholder of Tiburon Capital Corporation
14 (“TCC”) and one of the four managing members of Tiburon Capital LLC (“TCL”). TCC and
15 TCL are the managers of various single asset real estate entities in which the Debtor plays a major
16 role in the operations. Since 1992, TCC and TCL, either directly or through affiliates, have been
17 involved in a number of successful real estate transactions and activities, typically capitalized
18 through affiliated limited partnerships or limited liability companies with investor groups ranging
19 from a few to more than a hundred participants investing from \$1.5 million to more than \$16
20 million in the aggregate in each project. Unfortunately, as a result of the drastic downturn in the
21 commercial real estate market and the ensuing tightening of the credit markets, the various single-
22 asset-affiliated entities that own the real estate projects have been unable to meet debt service,
23 sell, or refinance development projects. The Debtor personally guaranteed certain of the secured
24 obligations owed by those affiliated entities. The Debtor sought protection under Chapter 11 in
25 order to avoid an attachment lien placed against his assets by one of his secured creditors in a
26 state court action.

27 The Debtor anticipates using his Chapter 11 case as an opportunity to sell the remaining
28 projects owned by the affiliated entities, thereby reducing dollar for dollar the obligations owing

on his personal guaranties for the entities' debts. Along with a substantial reduction in his liabilities as described, the Debtor hopes to provide a meaningful distribution to his creditors through a plan of reorganization.

III. SERVICES RENDERED

A. Initial Pleadings

Applicant conferred with the Debtor regarding the need and ability to seek bankruptcy protection. Applicant prepared all of the documents and pleadings required to be completed by the Debtor, including, but not limited to, the Schedules of Assets and Liabilities and Statement of Financial Affairs.

Applicant spent 13.1 hours in performing these tasks, incurring fees in the amount of \$4,463.50, as more particularly described in the attached **Exhibit A**.

B. General Creditor Inquiries

Applicant responded to all creditor inquiries regarding estate assets and liabilities.

Applicant spent 0.5 hours in performing these tasks, incurring fees in the amount of \$250.00, as more particularly described in the attached **Exhibit B**.

C. Finance/Use of Cash Collateral/Secured Claims

Prior to the commencement of the case, one of the Debtor's creditors, ORIX Capital Market LLC obtained an attachment lien against the Debtor's assets, necessitating the commencement of Debtor's bankruptcy case. Notwithstanding the fact that state law terminated the attachment lien (because the filing was within 90 days of the perfection of that lien) the Marin County Sheriff refused to release the attachment absent the consent of ORIX Capital Market LLC. ORIX Capital Market LLC refused to direct the Sheriff to release the lean and, Applicant rendered services in obtaining ORIX's compliance and direction to the Sheriff to release the lien.

Applicant conferred with the Debtor regarding the use of rents generated by certain of the estate properties, and the use of the Debtor's income. To that end Applicant prepared motions for use of the cash collateral rents and for the use of the estate property for payment of living expenses for the Debtor. Applicant prepared the motions, the memoranda of points and authorities, and the declarations in support of those motions. In addition, Applicant prepared

1 applications for orders shortening time for the service and hearing of those motions. Applicant
2 appeared at the hearing on both of those motions and prepared the orders thereon.

3 Applicant spent 53.3 hours in performing these tasks, incurring fees in the amount of
4 \$21,907.00, as more particularly described in the attached **Exhibit C**.

5 **D. Wendel Rosen Employment & Compensation**

6 Applicant prepared its application for employment and the order approving that
7 application. In addition Applicant prepared its invoices for preparation of this application.

8 Applicant spent 3.6 in performing these tasks, incurring fees in the amount of \$1,039.50,
9 as more particularly described in the attached **Exhibit D**.

10 **E. Employment & Compensation of Professionals**

11 Applicant also prepared the application for the Debtor to employ a broker for the sale of
12 his residence in Marin County. Applicant prepared the application, declaration and order on that
13 application.

14 Applicant spent 3.6 hours in performing these tasks, incurring fees in the amount of
15 \$1,189.50 as more particularly described in the attached **Exhibit E**.

16 **F. Financial Filings**

17 The Debtor retained an accountant, Bachecki Crom & Co LP. Nonetheless, Applicant
18 reviewed Debtor's Monthly Operating reports to ensure that all reporting requirements were met.

19 In addition, the Debtor was required to comply with the reporting requirements under
20 Rule 2015 and Form 26. Applicant prepared and served all of the required notices.

21 Applicant spent 1.6 hours in performing these tasks, incurring fees in the amount of
22 \$717.50, as more particularly described in the attached **Exhibit F**.

23 **G. Executory Contracts/Leases**

24 No services rendered during this Application Period.

25 **H. Operations**

26 Certain of the assets of the estate are rental properties in Idaho. Applicant communicated
27 with the tenants of those properties, and with the lenders on those properties regarding the case
28 and issues involving those properties.

1 Applicant spent 0.6 hours in performing these tasks, incurring fees in the amount of
2 \$300.00, as more particularly described in the attached **Exhibit H**.

3 **J. Asset Disposition**

4 The Debtor retained a broker for the sale of his residence. Applicant communicated with
5 the Debtor regarding the desirability of selling that property, and the decision to post pone that
6 sale due to the Debtor's spouse's health issues.

7 Applicant spent 0.4 hours in performing these tasks, incurring fees in the amount of
8 \$200.00, as more particularly described in the attached **Exhibit J**.

9 **K. Case Administration**

10 Applicant rendered services in all phases of administration of the case.

11 First, Applicant communicated with the United States Trustee ("UST") regarding the case,
12 and production of records required under the Bankruptcy Rules and the UST specific requests for
13 production of records for the initial debtor interview.

14 Applicant prepared amendments to the Debtor's Schedules of Assets and Liabilities and
15 Statement of Financial Affairs and List of Creditors as needed.

16 Applicant prepared a status conference statement and prepared a request for limiting
17 notice for the service of the status conference statement.

18 Applicant attended the 341 meeting of creditors, the initial debtor interview and the status
19 conference.

20 One of the Debtor's creditors, ORIX Capital Market LLC, filed an objection to the
21 Debtor's exemption of his IRA accounts. ORIX Capital Market LLC had objected because the
22 Debtor claimed an exemption under Bankruptcy Code section Sections 522(b)(3)(C) and 522(n).
23 Applicant researched the laws, and advised ORIX that its first objection, on the grounds that the
24 Debtor could not take the federal exemption, was unwarranted and unsupported by the law.
25 ORIX then amended its objection to the exemption, claiming the Debtor has not proved that he
26 was entitled to an exemption. Applicant prepared a detailed response and declaration in
27 opposition to the objection, appeared at the hearing on the objection and reviewed and produced
28 an additional 450 pages of documents to ORIX.

Applicant prepared and appeared at the second status conference in this case.

Applicant spent 70.5 hours in performing these tasks, incurring fees in the amount of \$25,261.00, as more particularly described in the attached **Exhibit K**.

L. Creditor Committees

No services rendered during this Application Period.

M. Litigation (Non-Bankruptcy Court)

Applicant reviewed the ORIX objection to the claim of exemption made by ORIX in the state court litigation.

Applicant spent 0.2 hours in performing these tasks, incurring fees in the amount of \$100.00, as more particularly described in the attached **Exhibit M**.

N. Stay Litigation

No services rendered during this Application Period.

O. Bankruptcy Litigation (Plaintiff)

No services rendered during this Application Period.

P. Bankruptcy Litigation (Defendants)

No services rendered during this Application Period.

Q. Claims Administration and Objections

Applicant communicated with the Debtor regarding a deficiency liability on the foreclosure of one of the properties owned by an affiliated company which the Debtor guaranteed.

Applicant spent 0.1 hours in performing these tasks, incurring fees in the amount of \$50.00, as more particularly described in the attached **Exhibit Q**.

R. Tax Matters

No services rendered during this Application Period.

S. Disclosure Statement

No services rendered during this Application Period.

T. Plan of Reorganization

No services rendered during this Application Period.

U. Plan Implementation

No services rendered during this Application Period.

V. Fee Application

Applicant has incurred fees in the preparation of this Application, in reviewing its billing, and categorizing its time. Each month, Applicant has prepared an informational bill for Debtor so that Debtor has been kept abreast of the fees incurred during the course of the case.

Applicant spent 1.0 hours in preparing this Application, incurring fees in the amount of \$425.00. The time rendered on preparation of the fee application is included in Category D. The fees charged for the preparation of the Application represent approximately 0.7% of the total requested compensation. Applicant anticipates that it will have incurred additional fees to finalize this Application that will be sought in a subsequent application.

IV. SUMMARY OF FEES AND COSTS INCURRED

Applicant's total time representing Debtor in this case totaled 147.5 hours, representing \$55,478.00 of fees. The hours are detailed on Applicant's computerized timesheets, copies of which are attached as **Exhibits A through V**. Applicant also incurred costs of \$3,246.03 as indicated in the attached **Exhibit W**.

The Exhibits detail specific services and identify the individual attorneys and paralegals that performed those services. At the end of each Exhibit appears a summary of time expended, blended hourly rates, and fees incurred by each attorney and paralegal. (Resumes of paralegals that worked on the case are attached hereto as **Exhibit X**.)

SUMMARY OF FEES

Exhibit	Category	Hours	Fees
A	Initial Pleadings	13.1	\$4,463.50
B	Creditor Inquiries	0.5	250.00
C	Financing/Use of Cash Collateral/Secured Claims	53.3	21,907.00
D	Wendel Rosen Employment Compensation	3.6	1,039.50
E	Employment & Compensation of Professionals	3.6	1,189.50

Exhibit	Category	Hours	Fees
F	Financial Filings	1.6	717.50
G	Executory Contracts/Leases	0.0	0.00
H	Operations	0.6	300.00
J	Asset Disposition	0.4	200.00
K	Case Administration	70.5	25,261.00
L	Creditor Committees	0.0	0.00
M	Litigation (NonBankruptcy Court)	0.2	100.00
N	Stay Litigation	0.0	0.00
O	Bankruptcy Litigation (Plaintiff)	0.0	0.00
P	Bankruptcy Litigation (Defendants)	0.0	0.00
Q	Claims Administration & Objections	0.1	50.00
R	Tax Matters	0.0	0.00
S	Disclosure Statement	0.0	0.00
T	Plan of Reorganization	0.0	0.00
U	Plan Implementation	0.0	0.00
V	Fee Application	0.0	0.00
Total		147.5	\$55,478.00

SUMMARY OF COSTS

Category	Amount
Certified Copies	\$ 26.00
DataSearch	41.37
Filing Fee	1,039.00
In-house Special Messenger	50.00
Internal Copy Charges	1152.30

Category	Amount
UPS Delivery	503.28
U.S. Postage	166.07
Westlaw	268.01
Total	\$3,246.03

Note on Costs. In accordance with the Bankruptcy Court Guidelines for Compensation and Expense Reimbursement of Professionals, Applicant's incoming facsimile charges are charged at 20¢ per page. Effective June 1, 2005, Applicant reduced its photocopy charges to 15¢ per page. Applicant has removed all surcharges from telephone calls and computerized research, if any, and has charged the estate only for its actual costs.

Letter Transmitting Fee Application to Debtor in Possession. In accordance with the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees, Applicant has transmitted a copy of this Application to Debtor, together with a copy of the transmittal letter attached hereto as **Exhibit Y**.

V. CONCLUSION

In view of the time expended, the responsibilities assumed, and Applicant's reputation and skill in the bankruptcy field, Applicant respectfully submits that the reasonable value of the services rendered during the Application Period is \$55,478.00 in fees. Applicant also expended the sum of \$3,246.03, for costs during the Application Period, and seeks approval of reimbursement of that amount. Applicant seeks authorization to pay the sum of \$58,724.03 as the total amount of fees and costs incurred during the Application Period from its retainer in the amount of \$102,695.61 leaving a retainer balance of \$43,971.58.

Applicant respectfully submits that the services rendered to Debtor were necessary and that the fees requested constitute reasonable and necessary fees expended on behalf of the estate.

WHEREFORE, Applicant prays that this court enter its order with respect to the following:

1. Allowing and approving \$55,478.00 of attorneys' fees and \$3,246.03 of costs incurred and expended on behalf of Debtor during the Application Period;
2. Authorizing Applicant to apply \$58,724.03 of the postpetition retainer to the award of attorneys' fees;
3. Authorizing Debtor to pay Applicant the total balance of fees and costs approved by the court; and
4. For such other and further relief as this court deems just and proper.

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CERTIFICATION

The undersigned professional certifies that (a) I have read the Application; (b) to the best of my knowledge, information, and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with the Guidelines for Compensation and Expense Reimbursement of Professionals for the United States Bankruptcy Court for the Northern District of California, unless specifically noted in the Application; (c) the compensation and expense reimbursement requested are billed at rates no less favorable than those customarily employed by Applicant and generally accepted by Applicant's clients; and (d) Applicant has not entered into any agreement or understanding with any other entity for the sharing of compensation received or to be received for services rendered in or in connection with this case, nor has the Applicant received from or shared with any other entity any compensation for services rendered in or in connection with this case.

I declare under penalty of perjury that all representations and time records attached to this Application are true and correct to the best of my knowledge, information, and belief.

Dated: November 13, 2009

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Elizabeth Berke-Dreyfuss
Elizabeth Berke-Dreyfuss
Attorneys for Debtor-in-Possession
John Frederick Dixon